

### **REMARKS/ARGUMENTS**

This Amendment is being filed in response to the Final Office Action dated August 4, 2008. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 2-10 and 12-14 are currently pending in the Application. Claims 12 and 14 are amended herein to clarify that which was already recited in the claims. No new matter is added by these amendments as the claims already recited that which is clarified by these amendments as discussed in more detail below. Accordingly, consideration and entrance of the amended claims is respectfully requested.

Claims 2-4, 6-10 and 12-14 are rejected under 35 U.S.C. §103(a) as allegedly obvious over U.S. Patent No. 6,069,853 to Novotny ("Novotny") in view of U.S. Patent No. 5,311,500 to Higuchi ("Higuchi"). Claim 5 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Novotny in view of Higuchi in further view of U.S. Patent No. 6,058,094 to Davis ("Davis"). It is respectfully submitted that claims 2-10 and 12-14 are allowable over Novotny in view of Higuchi alone, and in view of Davis for at least the following reasons.

It is undisputed that Novotny (emphasis added) "fails to teach explicitly about the recording stack having a first optical surface (6) most remote from the substrate (8); and having a second optical surface (7) closest to the recording stack (9)... in that at least one of the first optical surface (6) and the second optical surface (7) is provided with a transparent hydrophobic layer (10) that has a refractive index  $n$  and has a thickness smaller than  $0.5\lambda n$ ." (See, Office Action, page 4.) Higuchi is cited to supply that which is missing from Novotny. However, it is respectfully submitted that reliance on Higuchi is misplaced.

In a "Response to Arguments section of the Final Office Action, it is alleged that "applicant failed to see was what was presented in another embodiment that has been shown by Higuchi in Fig. 2. The moisture barrier is not just by the side of the substrate by also by layers 2, 3 and 4." This position is in fact unfounded since in the amendment submitted on March 5, 2008, the Applicants specifically pointed out that "FIG. 2 of Higuchi shows 'a moisture barrier layer 5a of the same type as that described above [in FIG. 1 and] is provided on the outer surface of the substrate 1, on all of the edge faces of the substrate 1, on all of the edge faces of a plurality of the layer 2, [recording layer] 3 and 4 provided on the substrate 1, and on the outer surface of the second dielectric layer 4.'" (See, Amendment submitted on March 5, 2008, page 7, lines 18-21.) In fact, Applicants identified not only FIG. 2, but each of FIGs. 1, 2, and 4 and in fact identified the edge surfaces of each of the recording layers 2, 3 and 4 as being in contact with the moisture barrier layer. Nonetheless, The Applicants concluded that "Higuchi fails to show either of a first optical surface of the recording stack having deposited a transparent hydrophobic layer on a surface of the first optical surface remote from the recording stack or an optical head with an objective having a second optical surface closest to the recording stack deposited with a transparent hydrophobic layer on a surface of the second optical surface remote from a focused radiation beam." (See, Amendment submitted on March 5, 2008, page 8, lines 2-6.)

It is respectfully submitted that no person of ordinary skill in the art would interpret that a layer deposition on a surface of an optical surface would be a deposition solely touching an edge of the optical surface. Further, clearly the Applicants did not interpret this deposition as such since the Applicants in fact pointed out that Higuchi shows deposition of the moisture barrier layer touching the edges of the recording layers 2, 3 and 4, yet still concluded that Higuchi failed to disclose or

suggest the recitation of the hydrophobic layer on a surface of the first and/or second optical surfaces.

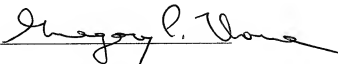
However, in the interest of expediting consideration and allowance of the pending claims, the Applicants have elected to clarify that (emphasis added) "the transparent hydrophobic layer extends substantially in a direction of an optical surface on which the transparent hydrophobic layer is deposited" as for example recited in claim 12 and as substantially recited in each of claims 8 and 14. Clearly, the edge surface of the recording layers 2, 3 and 4 is not substantially in a direction of the optical surface since the edge clearly is not the substantial direction in which the surface extends.

Based on the foregoing, the Applicants respectfully submit that independent claims 8, 12 and 14 are patentable over Novotny in view of Higuchi and notice to this effect is earnestly solicited. Davis is introduced for allegedly showing elements of a dependent claim and as such, does nothing to cure the deficiencies of Novotny in view of Higuchi. Claims 2-10 and 13 depend from claim 12 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

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